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March 27, 2008

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 5, 2007

Case Number: TSO-0579

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> For the reasons set forth below, I conclude that the individual should not be granted a security clearance at this time.

## **I. BACKGROUND**

The individual's employer, a Department of Energy (DOE) contractor, requested a security clearance on the individual's behalf. In response to that request, the local DOE security office initiated a background investigation of the individual. Because this investigation revealed information pertaining to the individual's alcohol use that raised legitimate security concerns, he was summoned for an interview with a Personnel Security Specialist in July 2007. After this Personnel Security Interview (PSI), the individual was referred to a local psychiatrist for a DOE-sponsored evaluation. This evaluation took place in August 2007. The psychiatrist (hereinafter referred to as "the DOE psychiatrist") subsequently submitted a written report to the local security office setting forth the results of that evaluation.

After reviewing all of the information in the individual's personnel security file, including the results of the interview and the psychiatric evaluation, the local security office determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. The manager of the local DOE office informed the individual of this determination in a letter that set forth in detail the DOE's security concern and the reasons for that concern. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

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<sup>1</sup>An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.



The individual requested a hearing on this matter. The local security office forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The DOE introduced thirteen exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist at the hearing. The individual introduced one exhibit into the record and presented the testimony of a friend, his mother, and his girlfriend, in addition to testifying himself.

## **II. THE NOTIFICATION LETTER**

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Paragraph (j) concerns information indicating that the individual "has been, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse." As support for this allegation, the Letter cites the diagnosis of the DOE psychiatrist that the individual suffers from Alcohol Abuse, in partial remission, with inadequate evidence of reformation or rehabilitation. The Letter also refers to the individual's five alcohol-related arrests or citations, including arrests for Driving While Intoxicated (DWI) in September 2005, September 2002, August 2001 and July 2001.

## **III. REGULATORY STANDARDS**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).



## **IV. FINDINGS OF FACT AND ANALYSIS**

### **A. Derogatory Information and the Associated Security Concern**

The following facts are not in dispute, and were obtained primarily from the individual during his psychiatric evaluation or during the PSI. The individual was approximately 17 years old when he began drinking in 2001. At first, he reported, he would drink one or two beers at friends' houses about every two weeks, with his heaviest drinking occurring later that year and into 2002. During this later period, he would consume four beers and two "shots" of hard liquor about once every two weeks, becoming intoxicated about once every two months. DOE psychiatrist's report at 2, PSI at 68.

In July 2001, the individual was arrested for DWI. He reported consuming five or six cans of beer and two shots of whiskey over a period of four hours at a friend's house prior to his arrest, which occurred after he struck a stopped vehicle on his way to the store. After the arrest, the individual's blood alcohol content (BAC) was measured twice at 0.14. PSI at 11-17; DOE psychiatrist's report at 2. In August 2001, the individual's second DWI arrest occurred after he was observed by the police running a red light. He said that prior to this arrest, he had consumed one beer, one shot of whiskey and a "miniature" (50 ml. bottle of whiskey) during the preceding 90 minutes.<sup>2</sup> The individual failed a field sobriety test, and his BAC was measured at 0.05 and 0.04.<sup>3</sup> As part of a plea agreement covering both of these arrests, the individual pled guilty to one count of DWI and one count of careless driving. As part of his sentence for these offenses, he was required to attend "DWI school." DOE psychiatrist's report at 3, PSI at 18-28.

In May 2002, the individual was cited for Possession of Alcoholic Beverage by a Minor. Although he did not deny that this citation occurred, he stated that he has no recollection of it. DOE psychiatrist's report at 3, Hearing Transcript (Tr.) at 46. The individual incurred his third DWI arrest in September of that year. He said that after consuming four or five bottles of beer and three shots of liquor during a two-hour visit at a friend's house, he drove his vehicle into a ditch. After the police arrived, he was arrested and his BAC was measured at 0.14 and 0.15. He pled "No Contest" to the charges and, as part of his sentence, he was again required to receive counseling regarding alcohol use and driving. DOE psychiatrist's report at 3-4. After this arrest, the individual attempted to stop drinking. After succeeding in these efforts for "two or three months," he eventually returned to his previous level of consumption. PSI at 85, 70.

When the individual turned 21 in May 2005, he began visiting bars with his friends. He admitted to drinking "three or four beers every couple of weeks," and occasionally drinking hard liquor. DOE psychiatrist's report at 4. The individual suffered his fourth DWI arrest in September 2005. On this

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<sup>2</sup> In his report, however, the arresting officer reported that the individual told him that he had consumed two beers. The officer also stated that he found two mostly empty whiskey miniatures in the individual's vehicle. DOE Exhibit 8.

<sup>3</sup> Because the individual was under 18 years of age, these readings were determined to be in excess of the limit prescribed under state law. DOE psychiatrist's report at 3.



occasion, after consuming multiple drinks with his friends at a bar and at a friend's house, he was stopped by police who had observed him running a stop sign. He failed a field sobriety test and was arrested. He pled guilty to a reduced charge of DWI first offense and, in addition to receiving a fine and community service, he was again required to attend "DWI school." *Id.*

After reviewing this information and the record as a whole, I find that the DOE has made a proper showing of derogatory information raising legitimate security concerns under paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material. Specifically, the results of the DOE-sponsored psychiatric evaluation and the arrests and citation discussed above adequately justify the invocation of paragraph (j). Repeated excessive alcohol consumption such as that exhibited by the individual is a legitimate security concern because it often leads to the exercise of questionable judgement or the failure to control impulses, and calls into question the individual's reliability and trustworthiness. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information Issued by the Assistant to the President for National Security Affairs, The White House (December 19, 2005), Guideline G.*

## **B. Mitigating Information**

The individual admitted at the hearing that, prior to his September 2005 DWI arrest, he "may have had a drinking problem." Tr. at 28. However, his testimony and that of his friend, his mother and his girlfriend was offered to demonstrate that he has abstained from alcohol use since the evening of the 2005 arrest, and that he is now a changed man who is currently exhibiting adequate evidence of reformation from Alcohol Abuse.

His friend and his mother indicated that they knew of no alcohol consumption by the individual subsequent to his September 2005 DWI arrest. Tr. at 13, 17. The individual's girlfriend testified that she had not seen the individual consume alcohol since they began dating in November 2006, and that he no longer socializes with the people with whom he used to drink. Tr. at 23, 25. The individual's mother stated that he used to associate and drink with "the wrong kids" at school, but that he is now a more responsible person who is more a leader than a follower. Tr. at 15, 21. She does not believe that he will return to his previous pattern of excessive alcohol use. Tr. at 20.

The individual testified that his earlier drinking problems "had a lot to do" with the people with whom he associated as a teenager. At that time, he did not realize the consequences that his actions would have later in his life. Tr. at 28-29. It was after his fourth DWI arrest in September 2005 that "a hundred light bulbs came on," and he decided that he had to stop drinking. He stated that he has not consumed any alcohol since the night of that arrest. Tr. at 29-31. Although he continues to socialize with people who drink, he is not around them while they are drinking. Tr. at 33. He stated that he has never received any alcohol abuse treatment other than court-ordered counseling as a consequence of some of his DWI arrests. *Id.* His relationship with his girlfriend is a significant incentive to remain abstinent, he concluded, because "she doesn't drink, and if I start drinking, I'd probably lose her that way, too." Tr. at 36.



### C. Analysis

After reviewing this testimony and the record in this matter as a whole, I conclude that although there are some mitigating circumstances, the DOE's security concerns under paragraph (j) remain unresolved. The most significant mitigating factor is that all but one of the individual's alcohol-related arrests occurred while he was still a teenager and, at the time of the September 2005 arrest, he was only 21 years of age. It is not uncommon for teenagers to exercise poor judgement, in part because they may not be fully aware of the future consequences of their actions. The individual has admitted that to have been the case here, and although I believe that he is now painfully aware of the consequences of his past actions, I find insufficient evidence of changed circumstances in the two-and-one-half years since his last arrest that would lead me to believe that the chances of future excessive alcohol use are remote. The individual has not undergone any alcohol abuse therapy, nor have there been any other significant changes in the individual's life since September 2005 that would suggest a strong and unwavering commitment to abstinence.

In this regard, I did not find credible the individual's claim that he has not consumed any alcohol since the evening of his 2005 DWI arrest. As an initial matter, the individual has previously made incorrect or highly questionable statements about his alcohol usage. During his interview with the DOE psychiatrist, the individual recalled consuming "three or four 12-ounce glasses of Long Island iced tea" and "four shots of Crown Royal [whiskey]" on the evening of his September 2005 arrest. However, his blood alcohol content was measured at 0.18 and 0.19, levels that would suggest the consumption of about twice as many drinks as the individual claimed. DOE psychiatrist's report at 4. Furthermore, during his PSI, the individual stated that his three DWI arrests in 2001-2002 were the only occasions during that time that he drove while intoxicated, and at the hearing the individual testified that "there may have been a couple" of more times, other than his four DWIs, that he has ever driven while intoxicated. Tr. at 42. While it is possible that these statements are true, I find it highly unlikely that the individual drove while intoxicated three times during the period from 2001 to 2002, and was arrested each time. Only slightly more plausible is the individual's claim that, of the six times that he has ever driven while intoxicated, he was arrested four of those times. I find a substantial history of minimization of past alcohol use in the individual's statements.

More significantly, the individual's claim of abstinence is directly contradicted by a Report of Investigation of the individual that was prepared by an investigator from the Office of Personnel Management (OPM). Based on information obtained during his August 29, 2006, interview with the individual, the investigator stated in this OPM Report that "Since this [September 2005 DWI, the individual] currently drinks one beer a month on weekends since 09/2005." DOE Exhibit 13 at 2. The investigator also interviewed the same friend who testified on the individual's behalf at the hearing. According to the OPM Report, that friend told the investigator that he and the individual "will have a beer together at [the individual's] house once every two weeks." DOE Exhibit 13 at 4. Both the individual and his friend testified at the hearing that the investigator mistakenly interpreted their statements about the individual's drinking as applying to the period after the September 2005 DWI, when in fact they described the individual's drinking before the arrest. Tr. at 31-32, 11. However, given the redundant nature of the investigator's statement based on his interview of the individual, it is difficult to imagine how the statement could have more strongly reflected the investigator's belief that the drinking occurred after, and not before, the 2005 DWI arrest. I therefore



believe it to be more likely that the individual and his friend are minimizing the individual's alcohol use than that the investigator made such an important mistake on two separate occasions.

Another factor that leads me to believe that the individual has not successfully addressed the DOE's security concern is the testimony of the DOE psychiatrist. As previously indicated, in his report, the DOE psychiatrist found the individual to be suffering from Alcohol Abuse, in partial remission, and he concluded that the individual was not demonstrating adequate evidence of rehabilitation or reformation. In order to demonstrate adequate evidence of rehabilitation or reformation, he opined that the individual would have to participate in Alcoholics Anonymous or another substance abuse treatment program at least once per week for a period of one year, while completely abstaining from alcohol use during this period. DOE psychiatrist's report at 9. After observing the testimony of the individual and his witnesses at the hearing, the DOE psychiatrist concluded that the individual was still not adequately reformed or rehabilitated. Tr. at 76.

The DOE psychiatrist was also skeptical about the individual's claim of total abstinence from drinking since September 2005. Tr. at 54. He based this skepticism on the investigator's statements in the OPM Report and, to a lesser extent, on laboratory tests conducted on August 21, 2007 which showed elevated levels of two liver enzymes in the individual's blood.<sup>4</sup> However, the most important factor cited by the DOE psychiatrist in reaching his conclusion is that although the individual received the DOE psychiatrist's report and its recommendation of one year of therapy at the same time that he received the October 15, 2007 Notification Letter, and read the report, Tr. at 38, he did not seek out treatment. That is significant, the DOE psychiatrist indicated, because treatment "gives more of a structure to make sure that your sobriety is in place, you've got someone vouching for your sobriety, a trained professional, and teaching you things to improve your prognosis." Tr. at 64-65. At the hearing, the individual expressed a willingness to enter into therapy and, on February 22, 2008, he informed me that he has begun meeting with a DOE Employee Assistance Program Counselor. Individual's Exhibit 1. Although I consider this to be of some mitigating value, I do not believe that such a limited amount of therapy adequately addresses the DOE psychiatrist's concerns, or mine, about the individual's current prognosis.

## **V. CONCLUSION**

I therefore find that the individual has failed to adequately address the security concern set forth in the Notification Letter, and I conclude that he has not demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual should not be granted a security clearance at this time.

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<sup>4</sup> The two enzymes are Alanine Aminotransferase (ALT) and Aspartate Aminotransferase (AST). The DOE psychiatrist testified that "for an alcohol evaluation, it is very significant that the liver enzymes are elevated," because "[i]t indicates that something is probably damaging the liver." Tr. at 50. However, he also stated that, in this case, this is "the mushiest piece of evidence," because the ALT and AST readings were "barely elevated," and the individual's GGT (Gamma Glutamyl Transferase) reading was normal. Tr. at 50, 52. Of the three enzymes, an elevated GGT reading is the most indicative of alcohol abuse. Tr. at 52.



The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Hearing Officer  
Office of Hearings and Appeals

Date: March 27, 2008